IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.12.2004

Coram:

The Honourable Mr.MARKANDEY KATJU, Chief Justice

and

The Honourable Mrs.Justice PRABHA SRIDEVAN

Tax Case (Appeal) No. 983 of 2004

Commissioner of Income Tax - II,
Chennai. … Appellant

Vs.

G.V.Venugopal
40, Eldams Road,
Swarna Flats,
Chennai. … Respondent

Appeals presented to the High Court against the order of the Income Tax Appellate Tribunal, Madras "C" Bench dated 14.06.2004 in ITA Nos.197/Mds/2004.

For Appellant … MR. J, Narayanasamy Junior
Standing Counsel for
Mrs.Pushya Sitaraman

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J U D G M E N T

(The Judgment of the Court was delivered by
The Honourable The Chief Justice)

This appeal is filed under Section 260-A of the Income Tax Act (in short 'the Act') against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench.

2. Heard the learned counsel for the parties.

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3. The substantial question of law arising in this appeal is as follows:-

> "Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is eligible to claim simultaneous benefit under Section 10(10C) as well as Section 89 (1) in respect of the compensation received under the voluntary retirement scheme?"

The Assessing Officer disallowed the relief under Section 89(1) of the Act in addition to the exemption allowed under Section 10(10C) of the Act. However, the Commissioner of Income-Tax (Appeals) held in favour of the assessee, and the Tribunal also has confirmed the order of CIT (Appeals). Hence, this appeal.

4. The facts in this appeal are that for the assessment year 2001- 02, the assessee G.V.Venugopal filed Return of Income on 05.07.2001 declaring the total income of Rs.3,33,280/-. The Assessing Officer held that the assessee has made inadmissible claim for relief under Section 89(1) on the amount received from the employer in excess of Rs.5,00,000/- in lieu of the assessee's voluntary retirement/seperation from the employment.

5. The assessee had been an employee of State Bank of India and had opted for voluntary retirement and was paid Rs.5,85,072/- by the employer under the special scheme of VRS framed in accordance with the guidelines described under Rule 21A of Income Tax Rules (In short 'the rules'). This amount received by the assessee under the special VRS package was in addition to the regular retirement benefits such as Gratuity, Leave Encashment salary etc. The assessee claimed exemption of income of Rs.5 lakhs from the said VRS amount under Section 10(10C) of the Act and offered balance amount of tax as income from the salary. At the same time, the assessee also claimed relief of Rs.8,883/- under Section 89(1) on this amount by spreading the same in three preceding assessment years as provided in Rule 21A of the Rules.

6. The question in this appeal is as to whether the assessee was entitled to relief under Section 89(1)?

7. Section 89(1) reads as follows:-

> " Where an assessee is in receipt of a sum in nature of salary, being paid in arrears or in advance or is in receipt, in any one financial year, of salary for more than twelve months, or a payment which under the provisions of

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clause (3) of Section 17 is a profit in lieu of salary, or is in receipt of a sum in the nature of family pension as defined in the Explanation to clause (iia) of Section 57, being paid in arrears, due to which his total income is assessed at a rate higher than at which it would otherwise have been assessed, the Assessing Officer shall, on an application made to him in this behalf, grant such relief as may be prescribed."

8. Section 10 of the Income Tax Act States:-

"In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included --

(10C) any amount received (or receivable) by an employee of –

(i) a public sector company; or

(ii) any other company ; or

(iii) an authority established under a Central, State or Provincial Act; or

(iv) a local (authority ;) or

(v) a co-operative society; or

(vi) a University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University under Section 3 of the University Grants Commission Act, 1956 (3 of 1956) ; or

(vii) an Indian Institute of Technology within the meaning of clause (g) of Section 3 of the Institutes of Technology Act, 1961 (59 of 1961); or

(viia) any State Government; or

(viib) the Central Government; or

(viic) an institution, having importance throughout India or in any State or States, as the Central

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Government may, by notification in the Official Gazettee, specify in this behalf; or

(viii) such institute of management as the Central Government may, by notification in the Official Gazettee, specify in this behalf.}

on his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or in the case of a public sector company referred to in sub-clause (i), a scheme of voluntary separation, to the extent such amount does not exceed five lakh rupees.

Provided that the schemes of the said companies or authorities (or societies or Universities or the Institutes referred to in sub-clauses (vii) and (viii) as the case may be governing the payment of such amount are framed in accordance with such guidelines (including inter alia criteria of economic viability) as may be prescribed.

Provided further that where exemption has been allowed to an employee under this clause for any assessment year, no exemption thereunder shall be allowed to him in relation to any other assessment year."

9. The Assessing Officer held that :-

" Thus Section 10(10C) gives a one time relief of maximum of Rs.5 lakhs out retirement benefit but it is restricted to one year only. Now the assessee is trying to claim further relief out of retirement benefit not only over and above Rs.5 lakhs, but spread over earlier three assessment years also. Hence, the proviso of Section 10(10C) is clearly violated if the assessee's version is accepted".

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10. In Appeal the CIT (Appeals) was of the view that the assessing officer was not justified in disallowing the relief under Section 89(1) in addition to exemption allowed under Section 10(10C). The CIT (Appeals) held as under:-

> " 5.1 The next question is whether the appellant is simultaneously entitled to exemption u/s 10(10C) as well as relief u/s 89(1) in respect of VRS payment. The Assessing Officer has followed clarification issued by the CBDT to the Chief Commissioner of Incometax-III, Bangalore vide letter dated 23-4-2001, which is reproduced as under:
>
> > "I am directed to say that amount up to Rs.5 lakhs received under VRS is exempt as per the provisions of Section 10(10C)(iii) and after allowing this exemption the balance amount of Rs.5 lakhs is not eligible for relief under Section 89(1) as per the proviso provided under Section 10(10C) which says ……. no exemption thereunder shall be allowed to him in relation to any other assessment year. Thus, distributing the amount of compensation in more than one assessment years is not permissible as per the existing provisions".
>
> 5.2. In the above clarification reference has been made to proviso to Section 10(10C) which says that no exemption "thereunder" shall be allowed to the assessee in relation to any other assessment year. This proviso is reproduced as under:
>
> > "Provided further that where exemption has been allowed to an employee under this clause for any assessment year, no exemption thereunder shall be allowed to him in relation to any other assessment year"

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The use of word "thereunder" in the above proviso means that once exemption is allowed, again no exemption "thereunder" i.e. u/s 10(10C) shall be allowed in relation to any other assessment year. The word "thereunder" referred to in this proviso cannot mean any section other thasn Section 10 (10C). This view draws support from CBDT circular no.657 dated 31-8-93. In paragraph 16 to 16.3 of this circular while explaining the scope and effects of the amendment introduced by the Finance Act 93 in Section 10(10C) it has been stated as under"

> "Extending the tax exemption on payments under voluntary retirement schemes to employees of certain authorities.
>
> 16.1 The guidelines prescribed by the Board, specify that the amount receivable on account of voluntary retirement of an employee should not exceed five hundred thousand rupees. The intention was to restrict the benefit of incometax exemption under Section 10 (10C) to the aforesaid amount to the case of an employee. The Finance Act incorporates the aforesaid intention in the law itself by providing that the amount exempt under Section 10(10C) shall not exceed five lakh rupees.
>
> 16.2 The guidelines prescribed by the Board for framing the schemes of voluntary retirement further specify that the employee should not have availed of the benefit of any other voluntary retirement scheme in the past. It may be difficult for the employers

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> to comply with this requirement where the employees do not disclose the fact of their having availed of such benefit in the past. It has, therefore, been provided that where exemption has been allowed to an employee under Section 10 (10C) for any assessment year, no exemption shall be allowed to him "thereunder" in relation to any other assessment year"

5.3 Thus, "thereunder" does not mean any section other than 10(10C). This means the appellant is entitled for relief u/s 89(1). Further, there is no specific or express provisions laid down in the act that when exemption is allowed u/s 10(10C), relief u/s 89(1) is not allowable. In this connection, reference can be made to other provisions of the Act where twin or double benefits have been curtailed by the statute wherever the statute has specifically so intended. For example, where a deduction has been allowed u/s 80CCC, a rebate with reference to such amount cannot be allowed u/s 88. In respect of amount received under voluntary retirement scheme there is no such specific curtailment of benefits regarding exemption u/s 10(10C) and relief u/s 89(1). Basically relief contemplated u/s 89(1) is aimed to mitigate hardship that may be caused on account of high incidence of tax due to progressive increase in tax rates. This can never be considered as a deduction or exemption like that of section 10 (10C).

6. The Assessing Officer has relied on the letter of CBDT addressed to the Chief Commissioner of Income Tax, Karnataka and Goa. However, this is not a Circular which can be said to be binding on the Assessing Officer. In any case, this is not binding on appellate authorities. Reliance is

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placed on the decision of the Hon'ble Supreme Court in the case of CIT V Hero Cycles (P) Ltd (1999 220 ITR 469). In view of this, I hold that the above circular is not applicable to the case of the assessee"

11. The appeal of the Department to the Tribunal was dismissed and hence, this appeal under Section 260-A of the Act.

12. Before dealing with the submissions of the learned counsel for the department, we would like to mention that there are two well settled principles in tax law:-

(i) There is no equity in tax, and the principle of strict or literal construction applies in interpreting tax statutes. Hence, on the plain language of the statute, if the assessee is entitled to two benefits, he has to be granted both these benefits.

(ii) If there are two reasonable interpretation of taxing statutes, the one in favour of the assessee has to be accepted.

13. The principle of strict interpretation of taxing statutes was best enunciated by Rowlatt, J in his classic statement:- (Cape Brady Syndicate v IRC (1921) 1 KB 64)

" In a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used".

In A.V.Fernandex vs. State of Kerala (AIR 1957 SC 657), the Supreme Court of India stated the principles as follows:- If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the taxing statute no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter.

Hence, in taxing statutes the language cannot be strained (State of Punjab v Jullunder Vegetable Syndicate

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(AIR 1955 SC 1295). If the words of a taxing statute fail, so must the tax. The Courts cannot, except rarely and in clear cases, help the draftsman by a favourable construction ITO v Nadar (AIR 1968 SC 623 = AIR 1960 SC 1016). However, a fair and reasonable construction must be given CWT v Kripashanker (AIR 1971 SC 2363 = 82 ITR 570)

In Innamuri Gopalan v State of AP (1964 SCR (2) 888) the exemption was denied to the assessee on the ground that the intention of the notification was to avoid double taxation, and as this was not a case of double taxation no exemption could be granted. The Supreme Court held that on the plain language of the notification, the assessee was entitled to exemption, and since the intention was not reflected in plain words, it could not be taken into consideration.

It is the first principle of interpretation that a statute should be read in its ordinary, natural and grammatical sense. As observed by the Supreme Court of India:

"In construing a statutory provision the first and foremost rule of construction is the literary construction. All that the Court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear".

This principle is applied with particular emphasis while interpreting taxing statutes vide ITO v Nadar (AIR 1968 SC 623), and the fundamental principle of interpreting taxing statutes is the principle of strict construction. In this respect taxing statutes are to be interpreted differently from beneficial legislation (eg labour laws) SK Verma v Industrial

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Tribunal (AIR 1981 SC 422) or the Constitution (State Trading Corporation v CTO (AIR 1963 SC 1811), where the principle of liberal interpretation applies.

In CIT v G.Hyatt (AIR 1971 SC 725) the question was whether under S 17(3) of the Income Tax Act, 1961, the interest on the assessee's own contribution to an unrecognized provident fund could be treated as salary. The Supreme Court of India held that the language of S 17(3) was plain and unambiguous, and hence the said amount was not salary but income from other sources and taxable under S 56.

In Polester & Co Ltd v Addl Comm of Sales Tax (AIR 1978 SC 897) the question was whether sales outside Delhi would also be included in taxable income. The Supreme Court held that the section used the word 'resale' simpliciter, and hence it referred to all resales and could not be limited to resales within Delhi alone. Thus, the Supreme Court went by the plain language of the statute, and did not speculate on the intention of the legislature.

In Hemraj Gordhandas v HH Dave, Asst.Collector (1978 2 ELT 350), the Supreme Court of India considered the language of a notification under the Central Excise Tariff and held that all that was required for claiming an exemption was that the cotton fabric must be produced on power looms owned by the co-operative society. There was no further requirement in the language of the notification that the cotton fabric must be produced by the society for itself. The Supreme Court refused to go into the question of the intention behind the exemption since the language of the notification was clear.

In Assessing Authority v East India cotton Mfg Co Ltd (1981 48 STC 239) the concessional rate under the Punjab Sales Tax was payable if certain raw materials were used in the

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manufacture of goods for sale. The contention of the assessee was that the word used in the Act was 'for sale' and not 'for sale by him' and hence the goods sold by a third party were also covered by the provision. This contention was accepted by the Supreme Court which followed the literal rule of interpretation.

In CWT v Ellis Bridge Gymkhana (AIR 1998 SC 120) the Supreme Court held that the word ' individual' in the charging section could not be stretched to include an association of persons. The Court held that the charging section had to be construed strictly, and if a person could not be brought within the ambit of the charging section by clear words, he could not be taxed at all.

Where a product is equally covered by clear wording of the amended item, reference to the past history of the unamended item is irrelevant (Reliance Silicon v CCE (1997 1 SCC 215)

A liberal interpretation of a taxing provision cannot be adopted on the plea that this would advance the purported object of the Act by encouraging the establishment of industrial undertakings in backward areas (CIT v NC Budharaja (AIR 1993 SC 2529)

In Steel Authority of India v CCE (AIR 1996 SC 2544) the question was whether raw naphtha intended for use in the manufacture of fertilizers was exempted although it was not actually used. It was held that the exemption notification only required proof that the raw naphtha was intended for use in the manufacture of fertilizer, and there was no further requirement that it was actually so used. Hence if it was purchased with the intention to be used for the manufacture of fertilizer, it was exempt, even though it could not be used for some reason subsequently.

14. In Partington v Attorney General (1869) LR HL 100), Lord Cairns observed thus:-

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" If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind. On the other hand if the Court seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.

Thus in interpreting a taxing statute one cannot go by the notion as to what is just and expedient (CIT v Shahzada Nand AIR 1966 SC 1342). In IRC v Hinchy (1960 AC 748) the House of Lords held that a provision in the Income Tax Act, 1952 for a statutory penalty (for making an incorrect return of income) of 20 pounds and trebling 'the tax which he ought to be charged under this Act' referred not to the tax on the amount which the taxpayer had failed to declare, but to the whole tax which he ought to be charged for the relevant year, notwithstanding the extravagant consequences which flowed from giving the words their natural meaning.

The Supreme Court of India has held that equity is out of place in tax laws (CIT v Firm Muar AIR 1965 SC 1216 see also 108 ITR 345 SC). In CIT v Madho Prasad Jatia (1976 4 SCC 92) it held that there could be no consideration of equity if the language of the provision was plain and clear, but where it was not, and two interpretations were possible, the one in consonance with equity and fairness should be preferred"

"Where the language of a provision is plain, courts cannot ordinarily concern themselves with the policy behind the provision, (Baidyanath Ayurved Bhawan v Excise Commissioner (AIR 1971 SC 738) or the intention of the legislature (ITO v Nadar AIR 1968 SC 623 (see also AIR 1963 SC 1062). As Lord Watson said in Solomon v Solomon & Co (1897 AC 22) 'intention of the legislature is a

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> common but slippery phrase. In ITO v Nadar (AIR 1968 SC 623) the Supreme Court of India observed that the rule that 'we must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was that the legislature contemplated' (Lord Hatherley in 1869 4 Ch 735) was made while construing a non-taxing statute. The said rule had only a limited application in interpreting a taxing statute. It follows from this decision that the mischief rule laid down in Heydon's case (1584 3 Co Rep 7a) has only a limited application to taxing statutes.
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> In Bank of Chettinad v CIT (AIR 1940 PC 183 (approved in AIR 1957 SC 657) the Privy Council protested against the suggestion that in revenue cases ' the substance of the matter' may be considered as against the strict legal position.
>
> In CIT v BM Kharwar (AIR 1969 SC 812) the assessee transferred some machinery of a firm to a private limited company. He sought to avoid the liability to be taxed on the excess realized over the written down value of the machinery on the plea that the substance of the transaction was only a step to readjust the business relation of the partners inter se. The Supreme Court of India rejected this contention holding that while taxing authorities were entitled to determine the true legal relation resulting from a transaction to unravel the device adopted by a party, the legal effect of a transaction could not be displaced by probing the 'substance of the transaction'.

Having laid down the above general principles relating to the Interpretation of Taxing Statutes, we may now come to the facts of the case on hand.

15. In the present case, all the authorities have agreed that the assessee is entitled to exemption to the extent of Rs.5 lakhs as contemplated by Section 10(10C) of

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the Act. The only question, therefore, remains is whether the assessee is also entitled to exemption under Section 89 (1) of the Act?

16. We have already observed that notions of equity do not apply in taxing statutes. Hence, if the assessee is entitled to two benefits on the plain language of statute, he has to be granted both those benefits.

17. The assessing officer in his assessment order observed that once exemption is allowed under Section 10 (10C) no further exemption can be allowed in relation to any other assessment year in view of the proviso to Section 10(10C). We are of the opinion that the view taken by the assessing officer is clearly incorrect. The second proviso to Section 10(10C) only refers to exemption claimed in any other assessment year. It is well settled that every assessment year is a self-contained unit. The assessment year in question in the present case is 2001-02 and the exemption claimed is in respect of this assessment year, although the exemption granted under Section 89(1) has been spread over several assessment years. The mere fact that the relief has been spread over several years, does not mean that the relief is not in respect of a particular assessment year.

18. The Tribunal has rightly pointed out that in the Income Tax Act, there are several provisions granting twin or double benefits, while in other provisions, twin or double benefits has been specifically prohibited. There is no prohibition to the twin benefits in respect of the amount received under the Voluntary Retirement Scheme. The relief contemplated under Section 89(1) of the Act is aimed to mitigate hardship that may be caused on account of the high incidence of tax due to progressive increase in tax rates. Hence, we entirely agree with the view taken by the Income-tax Tribunal.

19. The word 'salary' as defined in Section 17 of the Act includes any profit in lieu of salary, which has been defined in Section 17(3) of the Act to include any amount of compensation due or received by the assessee from his employer or former employer in connection with the termination of his employment. Hence, payment under the Voluntary Retirement Scheme is covered by the word 'salary', which has been given a very wide definition in Section 17. Since the assessee is covered by Section 89, he will get both the benefits, which he has claimed for.

20. Apart from the above, it is well settled that if two reasonable interpretation of taxing statutes are possible, the one in favour of the assessee should be accepted vide CIT v Naga Hills Tea Co Ltd (AIR 1973 SC 2524 (see also Commr. of Income Tax v Shahzada Nand & Sons (60

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ITR 392 SC), C.I.T v Kulu Valley Transport Co.P.Ltd (77 ITR 518 SC), The Commissioner of Income Tax, West Bengal – I, Calcutta v M/s.Vegetable Products Ltd.(88 ITR 192 SC), Collector of Estate Duty v R.Kanakasabai (89 ITR 251 SC) and Sun Export Corp v Collector of Customs (1997 6 SCC 564).

21. Thus, where the question was whether an assessee who has sustained a loss could validly file a return after the expiry of the period specified in S 22(1) of the Income Tax Act, 1922 but before the assessment was made, the answer was given in the affirmative relying on the above principle vide 'CIT v Kullu Valley Transport Co (77 ITR 518 SC'. Where the expression 'company in which the public are substantially interested' in the Income Tax Act had two interpretations, the one in favour of the assessee was preferred vide 'Addl CIT v Hindustran Milk Food Mfg co (98 ITR 441 (Punj)'. In CED v Kanakashabai (89 ITR 251 SC at 257) it was held that the phrase 'of any benefit to him by contract or otherwise' in S. 10 of the Estate Duty Act had two interpretations, and hence the one in favour of the assessee should be preferred.

22. In view of the above, we do not find any merit in this department appeal and the appeal is dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

pv/

TO,

1.The Commissioner of Income -Tax-II, Chennai.

2.The Asst. Registrar, Income Tax Appellate Tribunal,
Madras 'C' Bench, Rajaji Bhavan, III Floor,
Besent Nagar,Chennai. 90

3.The Asst. commissioner of Income Tax, Salary Circle II,
Chennai. 34

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4.The Commissioner of Income Tax,(Appeals) IV,
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1 cc to Mr. Pushya Sitaraman, Sr.Standing Counsel SR. 53381

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